

REMARKS

In response to the Office Action mailed on April 18, 2005, and further to the Board of Patent Appeals and Interferences' Decision on Appeal dated May 21, 2008, Applicant submits this Amendment together with a concurrently filed Request for Continued Examination (RCE).

In the Office Action, the Examiner rejected claims 64, 66, 67, and 83 under 35 U.S.C. § 102(b) as allegedly being anticipated by Alfernness (U.S. Patent No. 5,702,343), and objected to claims 59-62, 68, and 84 as being dependent upon a rejected base claim, but allowable if rewritten in independent form to include all of the limitations of the base claims and any intervening claims. The Examiner made the rejection final.

By this Amendment, Applicant amends claim 60-62 and 83, cancels claim 59, and adds new claims 85-98. Accordingly, claims 60-62, 64, 66-68, and 83-98 are currently pending. Of these claims, claims 83, 85, 87, 91, and 95 are independent.

Applicant gratefully acknowledges the Examiner's indication of the allowability of the subject matter of claims 59-62, 68, and 84. While Applicant does not necessarily agree that the cited reference discloses or suggests the claimed invention as set forth in independent claim 83, solely in the interests of expediting the prosecution of this application, Applicant has rewritten independent claim 83 to substantially include the subject matter of claim 59. In addition, new claim 91 includes certain subject matter of claims 83 and 59. Accordingly, Applicant respectfully submits that independent claims 83 and 91 are in condition for allowance.

Each of claims 60-62, 64, and 66-68 depends from independent claim 83 and is patentable for at least all of the reasons for which independent claim 83 is patentable.

Furthermore, in accordance with the Examiner's indication of claims 68 and 84 being allowable if rewritten in independent form and including all of the recitations of the base claim and any intervening claims, Applicant submits new claims 85 and 86. These claims are patentable because they contain the recitations of the claims identified by the Examiner as allowable. In particular, new independent claim 85 comprises the recitations of claim 68, and new dependent claim 86 comprises the recitations of claim 84.

Insofar as the rejections of claims 64, 66, 67, and 83 may be relevant to the subject matter of new claims 87-90, Applicant submits that claims 87-90 and 92 are also patentable over Alferness for at least the following reasons.

New independent claims 87 and 95 recite a method of treating an in situ mitral valve. The method includes, among other things, positioning a passive device with respect to a heart, "wherein the device includes an elongate member that traverses a chamber of the heart."

Alferness discloses a cardiac reinforcement device (CRD) and method for treating cardiomyopathy. More specifically, Alferness discloses a device and treatment method that provide reinforcement of the cardiac wall during only diastole by applying the device to the epicardial surface of the heart. See, e.g., Alferness, col. 1, ll. 8-14. In one embodiment, the disclosed Alferness device includes a patch that is applied to an external portion of a heart wall. See, for example, Figs. 1 and 2, and col. 3, ll. 40-62. In another embodiment, the disclosed Alferness device includes a jacket "that

circumferentially surrounds the epicardial surface of the heart," as shown in Figs. 3-5 and 7-8. Col. 3, ll. 64-67.

Alferness, therefore, fails to disclose, teach, or otherwise suggest a method of treating an *in situ* mitral valve, including positioning a passive device with respect to a heart, "wherein the device includes an elongate member that traverses a chamber of the heart," as required by each independent claims 87 and 95.

Accordingly, Applicant submits that independent claims 87 and 95, and the claims dependent on claim 87, are also patentable over the applied prior art.

The Office Action contains characterizations of the claims and the related art with which Applicant does not necessarily agree. Unless expressly noted otherwise, Applicant declines to subscribe to any statement or characterization in the Office Action.

In discussing the specification and claims in this Amendment, it is to be understood that Applicant is in no way intending to limit the scope of the claims to any exemplary embodiments described in the specification and/or shown in the drawings. Rather, Applicant is entitled to have the claims interpreted broadly, to the maximum extent permitted by statute, regulation, and applicable case law.

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this Amendment and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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